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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-237

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby files its Reply Comments in the above-captioned proceeding.

SUMMARY

In this docket the Federal Communications Commission ("Commission") seeks information on how to implement the infrastructure sharing provisions (see Section 259, as codified in the Communications Act of 1934) of the Telecommunications Act of 1996 ("the Act"). In these reply comments, U S WEST focuses on the fact that the infrastructure sharing provisions of the Act cannot be utilized in a manner which thwarts competition. Most specifically, U S WEST notes that the statutory provision in Section 259 which precludes the Commission from ordering the sharing of infrastructure when a qualifying carrier competes with an incumbent local exchange carrier ("LEC") in the incumbent LEC's telephone exchange area applies to all telephone exchange areas of incumbent LECs, including those areas of service established after the passage of the Act. Thus, if an incumbent LEC enters the market of a qualifying carrier in order to provide

exchange service, its sharing obligations come to an end in that area of service. The incumbent LEC must be permitted to so specify in any infrastructure sharing contract. U S WEST also briefly comments on, among other matters, a proposal by MCI Telecommunications Corporation ("MCI") to the effect that infrastructure sharing should be made available at prices dramatically below cost. Such a requirement would be anti-competitive and inconsistent with the Act.

DISCUSSION

In this proceeding, commentors generally agree with the fundamental premise of U S WEST's initial comments -- that infrastructure sharing pursuant to Section 259 of the Communications Act of 1934 should be relatively limited in nature and handled generally through negotiations, not through regulation. Several commentors espouse positions which merit brief comment.

First, MCI takes a position on Section 259 which is remarkable. MCI wishes to have the Commission order that infrastructure sharing be made available to qualifying carriers (a class which MCI defines more broadly than would the Commission) at prices which are dramatically below cost. MCI variously demands that the Commission establish the prices for shared infrastructure based on its interim proxy prices for interconnection services minus common costs and a normal return and at "short-run incremental cost" without profit or normal rate of return.[1] In other words, MCI wants the Commission to order incumbent LECs to cross-subsidize qualifying carriers by providing them below-cost infrastructure. There is,

[1] Comments of MCI, filed herein Dec. 20, 1996 at 7, 9.

of course, nothing in Section 259 (or in any other part of the Act) which requires or permits the Commission to use infrastructure sharing as a means of cross-subsidizing certain companies. To the contrary, Section 259 is intended to give to customers of rural telephone companies the benefits of modern technology in situations when competition will not immediately bring them such benefits. Nothing in the law indicates that such customers should get these benefits without paying for them or paying a lower price than that paid by customers in other areas. Indeed, it is difficult to imagine a rule more likely to obstruct competitive entry than the one proposed by MCI.

Second, a number of commentors observe that infrastructure sharing may have difficult consequences when the qualifying carrier faces competition -- from either the sharing LEC or others. The National Cable Television Association, Inc. ("NCTA") expresses concern that infrastructure sharing not be used to thwart competition by cable companies and other competitive entities.[2] MCI seems to contend that infrastructure sharing should be devised so as to enable qualifying carriers to fend off competitive market forces.[3] The United States Telephone Association ("USTA") observes that Section 259 of the Act is a "universal service provision," not a pro-competition provision, and should not be implemented under the same assumptions and with the same goals as are utilized in implementing Section 251.[4] The Rural Telephone Coalition ("RTC") asserts that the non-

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[2] See Comments of NCTA, filed herein Dec. 20, 1996 at i, 1-3.

[3] See Comments of MCI at i, 1-3.

[4] Comments of USTA, filed herein Dec. 20, 1996 at 3.

competition provisions of Section 259(b)(6) should not apply when an incumbent LEC expands its local exchange area, and that infrastructure sharing is still necessary even when the two carriers are competing in any geographic area outside of the currently extant local exchange area served by the incumbent LEC.[5]

These diverse approaches to how Section 259 infrastructure sharing fits into the pro-competitive goals of the Act demonstrate how sensitive the issue really is. We agree with NCTA that it would not make sense to permit infrastructure sharing to disrupt competitive market forces -- such an approach would shift the beneficiaries of Section 259 from customers in rural areas to the smaller carriers themselves and could indeed damage the very customers Section 259 is designed to serve. By the same token, NCTA's proposed solution -- that Section 259 infrastructure must be shared with non-qualifying carriers who compete with qualifying carriers is beyond the scope of the Act.[6] The RTC's suggestion that infrastructure sharing can reasonably be continued once an incumbent LEC has commenced operations in the local exchange area of the qualifying carrier (thereby expanding its own local exchange area) seems contraindicated by both the language of the Act (which does not differentiate between past, present, and future local exchange areas) and the specific refusal of Congress to exempt agreements under Section 259 from the antitrust laws.[7]

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[5] See Comments of RTC, filed herein Dec. 20, 1996 at 12.

[6] See Comments of NCTA at 4-5.

[7] See Comments of U S WEST, filed herein Dec. 20, 1996 at 3, 6.

CONCLUSION

We submit that these varying approaches to the competitive implications of infrastructure sharing under Section 259 of the Act highlight the importance of recognizing that infrastructure sharing is a provision of very limited utility and duration. Once competitive forces enter a market, the infrastructure sharing obligations of an incumbent LEC should begin to contract because competition will bring the benefits of modern infrastructure to customers in lieu of shared infrastructure. Certainly no rules should be adopted in this docket which would have the effect of delaying or impeding the development of competition in rural areas where carriers would be eligible to receive shared infrastructure.

Respectfully submitted,

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January 3 , 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 3rd day of January, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class United States mail, postage prepaid, upon the persons listed on the attached service list.

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*** Via Hand-Delivery**

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Last Update: 01/03/97